Affirmed and Memorandum Opinion filed September 23, 2010.

In The

Fourteenth Court of Appeals

NO. 14-08-00696-CR

ALFRED MARBLES, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 262nd District Court
Harris County, Texas
Trial Court Cause No. 1148166

M E M O R A N D U M O P I N I O N

Alfred Marbles appeals his conviction following a jury trial on the offense of possession of a firearm by a felon. *See* Tex. Penal Code § 46.04 (Vernon Supp. 2009). The jury assessed an enhanced punishment of 25 years' confinement based on appellant's two prior consecutive felony convictions. *See* Tex. Penal Code § 12.42(d) (Vernon Supp. 2009). We affirm.

BACKGROUND

During the Houston Police Department's investigation of an unrelated capital murder, Investigator Jennifer Coffelt interviewed Camesha Shaw. Investigator Coffelt

learned from Shaw that she had pawned a firearm for appellant, who was another potential witness in the murder case. Shaw explained that she had done so on several occasions because appellant could not pawn guns himself. She claimed not to know precisely why he could not do so, although she knew it had something to do with his criminal history. Investigator Coffelt and Sergeant Eli Cisneros wished to interview appellant as a potential witness in the murder case, but not as a suspect. The officers visited his home and left a business card. Appellant contacted the officers shortly thereafter and agreed to accompany them to the police station to discuss the capital murder investigation. The officers explained to appellant that he was not under arrest, and he was not handcuffed at any time.

Investigator Coffelt and Sergeant Cisneros conducted a videotaped interview with appellant at the police station. He and the officers discussed at length his whereabouts on the date of the murder and his recollection of who was present when the murder occurred. During the course of the interview, appellant stated that he had directed Shaw to pawn his .9-mm Ruger pistol several days after the murder. He stated that he had possessed the firearm outside of his home when he carried it to meet Shaw at the pawn shop. Appellant indicated that Shaw pawned the firearm for him because his prior criminal convictions for "robbery and other incidents" prevented him from doing so himself. The officers concluded the interview, verified appellant's prior felony convictions, and arrested him for unlawful possession of a firearm. *See* Tex. Penal Code § 46.04. Appellant was indicted. Appellant moved to suppress his confession, but the trial court denied his motion.

The jury found appellant guilty, and he stipulated that he had two prior felony convictions. The jury assessed his punishment at 25 years' confinement according to enhanced sentencing guidelines. *See* Tex. Penal Code § 12.42(d).

Appellant raises two issues on appeal: (1) the trial court should have excluded his confession because it was given while in custody without the benefit of warnings

mandated by *Miranda v. Arizona*, 384 U.S. 436, 444 (1966); and (2) the confession was uncorroborated and thus insufficient to sustain his conviction.

ANALYSIS

I. Custodial Interrogation

We review the trial court's ruling on a motion to suppress for abuse of discretion. *See State v. Callaghan*, 222 S.W.3d 610, 612 (Tex. App.—Houston [14th Dist.] 2007, pet. ref'd) (citing *Long v. State*, 823 S.W.2d 259, 277 (Tex. Crim. App. 1991)). If supported by the record, a trial court's ruling on a motion to suppress will not be overturned. *Id*. At a suppression hearing, the trial court is the sole finder of fact and is free to believe or disbelieve any or all of the evidence presented. *Id*. We give almost total deference to the trial court's determination of historical facts that depend on credibility and demeanor. *Id*. However, we review *de novo* the trial court's application of the law to the facts, such as determinations of probable cause. *See Guzman v. State*, 955 S.W.2d 85, 89 (Tex. Crim. App. 1997) (citing *Ornelas v. U.S.*, 517 U.S. 690, 697 (1996)).

The trial court heard the testimony of Investigator Coffelt and Sergeant Cisneros regarding appellant's motion to suppress, and it issued findings of fact and conclusions of law following its denial of the motion. The trial court found that the officers, whose testimony the court found to be credible, did not have probable cause to arrest the defendant for any crime before the appellant made incriminating statements during the interview. The court also found that the appellant's statement was entirely voluntary, and it identified no circumstances that would support appellant's argument that the interview was custodial.

A person is in custody only if a reasonable person under the same circumstances would believe that his freedom of movement was restrained to the degree associated with a formal arrest. *Dowthitt v. State*, 931 S.W.2d 244, 254 (Tex. Crim. App. 1996) (citing *Stansbury v. California*, 511 U.S. 318, 322–326 (1994)). The reasonable person standard

presupposes an innocent person. *Id.* (citing *Florida v. Bostick*, 501 U.S. 429, 438 (1991)). The subjective intent of law enforcement officials to arrest is irrelevant unless that intent somehow is communicated or otherwise manifested to the suspect. *Id.* (citing *Stansbury*, 511 U.S. at 321, and *United States v. Mendenhall*, 446 U.S. 544, 554 n.6 (1980)); *see also Dancy v. State*, 728 S.W.2d 772, 778 (Tex. Crim. App. 1987).

The Texas Court of Criminal Appeals has identified at least four situations that may constitute custody:

> (1) the suspect is physically deprived of his freedom of action in any significant way;
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> (2) a law enforcement officer tells the suspect that he cannot leave;
>
> (3) law enforcement officers create a situation that would lead a reasonable person to believe that his freedom of movement has been significantly restricted; and
>
> (4) there is probable cause to arrest manifested to the suspect by law enforcement; other additional circumstances would lead a reasonable person to believe he is under restraint; and the officers do not tell the suspect that he is free to leave.

Dowthitt, 931 S.W.2d at 255. Appellant argues only that the fourth situation applies in this case.

Probable cause to arrest exists when reasonably trustworthy facts and circumstances within the knowledge of law enforcement would warrant a reasonable and prudent belief that a particular person has committed a crime. *Jones v. State*, 493 S.W.2d 933, 935 (Tex. Crim. App. 1973). According to appellant, the officers had probable cause to arrest him when Shaw informed Investigator Coffelt that she pawned a firearm for him because of appellant's "criminal history." Thus, appellant argues, he was in custody when the officers interviewed him, and his statement should be inadmissible because it was acquired before he received *Miranda* warnings.

Even assuming for argument's sake that Shaw's information provided probable cause to arrest appellant before the interview, probable cause makes an interrogation

custodial only if it is manifested to the defendant. *See Dowthitt*, 931 S.W.2d at 255. Appellant does not argue that Investigator Coffelt or Sergeant Cisneros communicated to him that he was being interviewed for any purpose other than as a voluntary witness in a murder case. Moreover, appellant identifies no evidence that contradicts the trial court's determination that his interrogation was conducted under objectively voluntary circumstances. The record supports the trial court's rejection of appellant's argument that he was in custody when the interview began.

Appellant alternatively argues that probable cause to arrest him arose during the interview when he revealed that he had transported his firearm from his home to be pawned by Shaw. He claims that *Miranda* requires suppression of the very information that gave the officers probable cause to arrest him during the interview. However, when a suspect gives officers probable cause to arrest, only the information given after that point is excludable in the absence of *Miranda* warnings. *See, e.g.*, *Turner v. State*, 685 S.W.2d 38, 42–43 (Tex. Crim. App. 1985) (statements made before interviewee offered information implicating himself in a crime did not trigger *Miranda*). Accordingly, the incriminating information was not obtained in violation of *Miranda*, and the trial court properly denied appellant's motion to suppress on this ground.

We overrule appellant's first point of error.

II. *Corpus Delicti*

Appellant challenges the legal sufficiency of the evidence in his second issue. He contends that the State failed to establish *corpus delicti* (*i.e.*, that a crime had been committed), and that his confession was insufficient to support his conviction.

An extra-judicial confession alone is insufficient to support a conviction. *Fisher v. State*, 851 S.W.2d 298, 302–03 (Tex. Crim. App. 1993). The confession must be corroborated by some evidence that tends to establish *corpus delicti* on its own. *Id*.; *Thomas v. State*, 807 S.W.2d 803, 805–06 (Tex. App.—Houston [1st Dist.] 1991, pet. ref'd). Our task is to consider all the record evidence except appellant's extra-judicial

confession in the light most favorable to the jury's verdict, and to determine if that evidence tends to establish that a crime was committed. *Fisher*, 851 S.W.2d at 303. The evidence may be circumstantial as well as direct, and it need not prove the underlying offense conclusively. *Cardenas v. State*, 30 S.W.3d 384, 390 (Tex. Crim. App. 2000); *Thomas*, 807 S.W.2d at 806 (citing *White v. State*, 591 S.W.2d 851, 864 (Tex. Crim. App. 1979)). Once the evidence tending to establish that a crime was committed has been identified, a confession is sufficient to show a defendant's connection to the crime. *Fisher*, 851 S.W.2d at 303–04.

The jury was asked whether it found beyond a reasonable doubt that on the date in question, appellant "did then and there unlawfully, intentionally or knowingly possess a firearm at a location other than the premises at which the defendant lived, after being convicted of the felony offense of forgery." *See* Tex. Penal Code § 46.04(a)(2). Setting aside the information provided by appellant's statement, we look to the other evidence presented to the jury to determine whether it tends to show that a crime was committed.

As to appellant's status as a felon, the jury heard testimony from Deputy Roy Glover that the fingerprint associated with a May 9, 2006 felony forgery conviction belongs to appellant. The jury also heard testimony from Sergeant Eli Cisneros about the information discovered in the course of the capital murder investigation:

> A: [T]hrough an interview with a Camesha Shaw, which is one of the persons [Investigator Coffelt] had to interview, she discovered that a pistol was pawned by this Camesha Shaw. And it was pawned—during our interview, it was discovered that she had pawned a pistol for an individual that she referred to as Joe Marbles. . . . [Shaw] had indicated that she pawned the weapon at a [sic] Ace Pawnshop located on North Shepherd.
>
> Q: Did you go to the Ace Pawnshop?
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> A: I did.
>
> Q: So . . . it was actually you that retrieved the weapon from the pawnshop?
>
> A: Yes.
>
> * * *

Q: And I just want to clarify . . . this weapon was not at the Defendant's home; is that correct?

A: No, it was not.

Viewed in the light most favorable to the jury's verdict, this evidence tends to establish that appellant, a convicted felon, was in possession of a firearm before Shaw pawned it for him. Additionally, evidence that the firearm was not at appellant's home tends to establish that the firearm was possessed at a location other than the premises at which the appellant lived. Possession of a firearm at a location other than the premises at which a felon lives constitutes a crime under section 42.04(a)(2). *See* Tex. Penal Code § 42.04(a)(2). Because this amounts to at least "some evidence" tending to indicate that a crime had been committed, the extra-judicial confession of appellant was sufficiently corroborated and was properly relied upon by the jury in determining appellant's guilt. Accordingly, we overrule appellant's second issue.

CONCLUSION

Having overruled both appellant's issues on appeal, we affirm.

/s/ William J. Boyce
Justice

Panel consists of Justices Seymore, Boyce, and Christopher.

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